STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1873

In re: the Assignment for the Benefit of Creditors of William Sczepanski.

Filed July 22, 2019
Affirmed
Reyes, Judge

Marshall County District Court
File No. 45-CV-17-39

Philip Kaplan, Anthony, Ostlund, Baer & Louwagie, P.A., Minneapolis, Minnesota (for appellant GF Finance, Inc.)

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Considered and decided by Bjorkman, Presiding Judge; Rodenberg, Judge; and Reyes, Judge.

U N P U B L I S H E D O P I N I O N

REYES, Judge

In this priority dispute between three creditors, one appellant-creditor challenges a district court's order authorizing an auction of unit retains[1] in an assignment for the benefit

[1] The retained portion of payments otherwise due shareholders of a cooperative.

of two respondent-creditors, arguing that the district court erred in (1) determining ownership of the unit retains; (2) finding that respondent creditors created valid security interests in the unit retains; and (3) ordering the auction of unit retains that belonged to entities not involved in the assignment proceeding. We affirm.

FACTS

American Crystal Sugar Company (American Crystal) is a Minnesota agricultural cooperative that is owned exclusively by sugar-beet growers. Owners of American Crystal are the "common shareholders" of record, and are defined in American Crystal's bylaws as "[a]ny person, firm, partnership, or corporation who is a bona fide sugar beet farm operator." To become a common shareholder of American Crystal, a person or entity must purchase both common-stock shares *and* preferred-stock shares in American Crystal.

Common shareholders are entitled to payment in return for delivering sugar beet crops to American Crystal. The bylaws authorize American Crystal to retain a portion of the payments otherwise due to its common shareholders in order to capitalize the company. This retainage is referred to as "unit retains." The bylaws provide that the unit retains ultimately shall be paid out to the common shareholder of record from whom they were withheld. Historically, American Crystal's board returns the unit retains after seven years.

William Sczepanski (Sczepanski), a sugar-beet grower, owned 35 common-stock shares in American Crystal, plus the requisite preferred-stock shares, in his individual capacity. Because Sczepanski was the common shareholder of record for these shares, American Crystal issued unit-retain payments by check to him personally.

Separately, Sczepanski joined 22 different sugar-beet entities as a managing or general partner. The 22 sugar-beet entities included various limited-liability partnerships, limited partnerships, and joint ventures, created by contract. Sczepanski contributed one common-stock share of American Crystal, and another individual contributed preferred-stock shares of American Crystal, to each sugar-beet entity. Sczepanski did not contribute preferred-stock shares to any of the 22 sugar-beet entities.

In 2004, a nonparty bank filed a UCC-1 financing statement, which named Sczepanski and his wife, in their individual capacities, as debtors, and appellant GF Finance, Inc. (GF Finance) as one of several secured parties. The financing statement cited collateral including "[a]ll American Crystal Sugar Co. unit retains." In 2007, Sczepanski, in his individual capacity, executed a security agreement in favor of GF Finance. The asset list attached to the security agreement included "[a]ll [u]nit retains of American Crystal Sugar Company."

Between 2009 and 2010, all 22 sugar-beet entities executed a first set of notices of security interest in favor of respondent Choice Financial Group (Choice Financial), as creditor. All but two sugar-beet entities executed a later set of notices of security interest in favor of respondent John Deere Financial (John Deere), as creditor. Each of the notices of security interest was signed by Sczepanski, on behalf of the relevant sugar-beet entity, signed by Choice Financial or John Deere, and involved the sugar-beet entities' "unit retains from [American Crystal]." Each of the notices also contained a request for American Crystal to issue joint unit-retain checks to the "borrower" (the common shareholder) and the "secured party" (the creditor). American Crystal signed these notices.

In 2009 and 2010, Choice Financial and John Deere, respectively, also obtained security interests in Sczepanski's personal unit retains, subsequent in priority to GF Finance's 2007 security interest.

In January 2017, Sczepanski participated in an assignment for the benefit of his creditors, transferring to assignee Erik A. Ahlgren all of his assets. An addendum to the assignment provided that Sczepanski's assets included, among other things, Sczepanski's "35 Shares in American Crystal Beet Stock" and his interest in "$1,200,000 [of] American Crystal Unit Retains." The assignment identified GF Finance, Choice Financial, and John Deere as creditors of Sczepanski.

Ahlgren filed a motion in district court to authorize (1) the sale of the expected American Crystal unit retains by auction, free and clear of liens and (2) the distribution of the proceeds from the sale. His motion proposed to distribute to GF Finance the proceeds from the sale of the unit retains *payable directly to Sczepanski*, as GF Finance had first priority in those unit retains, and to distribute to Choice Financial and John Deere the proceeds from the sale of the unit retains *payable directly to the sugar-beet entities*.[2] GF Finance objected to Ahlgren's motion, claiming that it had a first-priority security interest in both the "35 Shares in American Crystal Beet Stock" and the "$1,200,000 [of] American

[2] Choice Financial and John Deere claimed conflicting security interests in the unit retains owned by the sugar-beet entities. However, Choice Financial filed its earliest relevant financing statement in 2009, and John Deere filed its earliest relevant financing statement in 2010. Accordingly, Choice Financial had a first-priority security interest in the unit retains at issue, and John Deere had a second-priority security interest.

Crystal Unit Retains," because Sczepanski personally owned all of them, including the unit retains for which the sugar-beet entities were listed as the common shareholder of record.

On April 9, 2018, the district court issued an order authorizing auction of the unit retains and distribution of the sale proceeds in the manner proposed by Ahlgren. The district court made express findings of fact, which it also included in the following conclusions of law:

> (i) [E]ach respective [s]ugar [b]eet [e]ntity granted a first priority security interest in its unit retains to [Choice Financial].
>
> (ii) John Deere has a second priority interest in the unit retains of the [s]ugar [b]eet [e]ntities based on its notices.
>
> (iii) GF Finance has a third priority security interest in the unit retains of the [s]ugar [b]eet [e]ntities payable to [Sczepanski] as Grower, Managing Partner, or General Partner based on its UCC-1 financing statement and security agreement from 2004 and 2007, respectively.
>
> (iv) GF Finance has a first priority security interest in the unit retains payable to [Sczepanski].

Thereafter, GF Finance moved for amended findings. The district court made slight modifications to three of its findings of fact for clarification but otherwise denied GF Finance's motion. This appeal follows.

D E C I S I O N

We review a district court's denial of a motion for amended findings for an abuse of discretion. *Zander v. Zander*, 720 N.W.2d 360, 364 (Minn. App. 2006), *review denied* (Minn. Nov. 14, 2006). A district court's findings "shall not be set aside unless clearly

erroneous." Minn. R. Civ. P. 52.01. A finding is "clearly erroneous" when this court has "the definite and firm conviction that a mistake has been made." *Vangsness v. Vangsness*, 607 N.W.2d 468, 472 (Minn. App. 2000) (quotation omitted). When determining whether findings are clearly erroneous, this court views the record in the light most favorable to the district court's findings. *Id.*

I. The district court did not err in finding that Sczepanski does not own the sugar-beet entities' unit retains in his individual capacity.

GF Finance argues that it has a first-priority security interest in all of the unit retains at issue because (1) Sczepanski, individually, owns them; (2) he never transferred his right to receive them to the sugar beet entities; and (3) he owns the unit retains because the sugar-beet entities' contracts state that they are his sole property. We disagree.

GF Finance's three arguments require interpretation of American Crystal's bylaws and the sugar-beet entities' contracts. We review de novo a district court's interpretation of an entity's written documents, such as its bylaws and contracts. *In re Stisser Grantor Trust*, 818 N.W.2d 495, 502 (Minn. 2012).

Article VI, Section 5 of American Crystal's bylaws provide that unit retains shall be paid out to the common shareholder of record. The bylaws clearly state that, to become a common shareholder of American Crystal, an "eligible person, firm, partnership or corporation must purchase *one share of common stock* of [American Crystal] *and further purchase the preferred stock of* [American Crystal]." (Emphasis added.)

Here, Sczepanski contributed one common-stock share to each sugar-beet entity, and another individual contributed preferred-stock shares. As the owner of both types of

shares, the sugar-beet entities are the common shareholders of record. Therefore, Sczepanski, individually, cannot be the common shareholder of record for the sugar-beet entities, and is not the owner of the sugar-beet entities' unit retains. Because the sugar-beet entities owned most of the disputed unit retains, and each sugar-beet entity granted Choice Financial a security interest in them, Choice Financial has a first-priority security interest in these unit retains.

GF Finance next relies on the district court's conclusion in its April 9, 2018 order that "GF Finance has a first priority interest in the unit retains payable to [Sczepanski]." GF Finance argues that this conclusion of law proves that it is undisputed that Sczepanski, individually, owns all of the unit retains at issue, and that GF Financial has a first-priority security interest in them. In its September 10, 2018 order denying GF Finance's motion to amend findings, the district court amended several of its findings of fact to further clarify that "Sczepanski, individually, was not the [c]ommon [s]hareholder of record for the [s]ugar [b]eet [e]ntities." Rather, he was the common shareholder of record only for the 35 shares he owned individually. Accordingly, the district court did not err by finding that GF Finance only has a first-priority security interest in the unit retains owned by Sczepanski individually.

GF Finance finally argues that the sugar-beet entities' partnership and joint-venture contracts expressly indicate that Sczepanski shall remain the sole owner of the entities' unit retains. GF Finance relies on language in the various contracts indicating either that the unit retains are the sole property of Sczepanski or that they shall be allocated to him. But this language is found in sections of the contracts that provide for the "Distribution of

Assets on Termination," "Division of Proceeds," adjustments to "Allocation and Distribution of Partnership Income," or distribution of joint-venture income. The record does not indicate that any of the sugar-beet entities terminated or that division of proceeds is an issue. Further, as a matter of course, American Crystal must first pay the unit retains to the common shareholder of record before any proceeds can be distributed. As a result, the relevant contract provisions either are not triggered or are irrelevant as to who is the immediate owner of the unit retains. We conclude that the district court did not err in finding that the disputed unit retains are the property of the sugar-beet entities.

II. The district court did not clearly err in finding that Choice Financial and John Deere created valid security interests in the sugar-beet entities' unit retains.

GF Finance contends that, even if the sugar-beet entities owned most of the disputed unit retains, GF Finance nonetheless still has a first-priority security interest in all of them because Choice Financial's and John Deere's attempts to establish security interests in the sugar-beet entities' unit retains failed under Minnesota law. We disagree.

A security interest is enforceable against the debtor and third parties if (1) value has been given; (2) the debtor has the power to transfer rights in the collateral; and (3) if one of several conditions is met, including that the debtor has authenticated a security agreement that provides a description of the collateral. Minn. Stat. § 336.9-203(b)(1)-(2), (3)(A) (2018). A "security agreement" is "an agreement that creates or provides for a security interest." Minn. Stat. § 336.9-102(a)(74) (2018). A security agreement is "authenticated" when it is signed by the debtor. Minn. Stat. § 336.9-102(a)(7)(A) (2018). In Minnesota, a valid security agreement "must somehow state that a lien is created in

identifiable collateral." *Allete, Inc. v. GEC Eng'g, Inc.*, 726 N.W.2d 520, 523 (Minn. App. 2007). It must be clear from the face of the instrument that the parties intended to create a security interest. *Vacura v. Haar's Equip., Inc.*, 364 N.W.2d 387, 392 (Minn. 1985).

In August 2017, Sczepanski, on behalf of each of the 22 sugar-beet entities, executed security agreements in favor of Choice Financial. These security agreements satisfy the statutory requirements for creating a valid security interest. First, the security agreements convey value because they provide that "the Debtor [the relevant sugar beet entity] grants the Secured Party [Choice Financial] a security interest . . . in the following property ('the Collateral')." The "[c]ollateral" includes "[a]ll American Crystal Sugar Company unit retains." Second, Sczepanski had the authority to execute the security agreements on behalf of the sugar-beet entities through the signed and executed 2011 "Loan and Guaranty Agreement[s]" between the relevant sugar-beet entity and Choice Financial. Each loan agreement provides that:

> The [sugar beet entity partner] and the Debtor [Sczepanski and his wife, as individuals] hereby agree that the Debtor *may execute on behalf of the [sugar beet entity]*, an *Agricultural Security Agreement*, Financing Statement, Assignment of Indemnities, *and any other loan documents reasonably requested by [Choice Financial]* to properly secure the guaranty by granting a lien on the sugar beet crop."

(Emphasis added.) Third, Sczepanski authenticated each of the 22 security agreements on behalf of the "[d]ebtor" (the relevant sugar beet entity). Further, on September 14, 2017, Choice Financial filed UCC-1 financing statements with respect to each of the sugar beet

entities.[3] By filing the financing statement, Choice Financial perfected its security interest in the sugar beet entities' collateral. Minn. Stat. § 336.9-310(a) (2018) (providing that filing a financing statement perfect a security interest).

The execution of the security agreements and the filing of the financing statement occurred in August and September of 2017, respectively, after Sczepanski's January 2017 assignment for the benefit of his creditors. As a result, GF Finance argues, Sczepanski lacked the authority to enter into the security agreements in August 2017 because "he did not have any right, title, or interest left in the [u]nit [r]etains to assign." The district court found that the assignment transferred Sczepanski's *financial interest* in the sugar-beet entities' unit retains to Ahlgren. But the district court found that Sczepanski retained the right to enter into security agreements on behalf of the sugar beet entities, "so long as those agreements did not harm the financial interests of the entities." The record supports these findings. Therefore, we conclude that the district court did not err in finding that Choice Financial and John Deere created valid security interests in the unit retains of the sugar-beet entities.

The district court found that, even assuming that Sczepanski lacked the authority to execute the security agreements and that the corresponding financing statements are invalid because they occurred after the assignment, the sugar-beet entities nevertheless "effectively granted an earlier, enforceable security interest" to Choice Financial and John Deere through the execution of the 2009 and 2010 notices of security interest.

[3] One of the sugar-beet entities, Sczepanski and R.K.A. Limited Partnership, filed a financing statement with a second nonparty bank instead of Choice Financial.

The district court found that the notices of security interest, executed before Sczepanski's 2017 assignment for the benefit of his creditors, also satisfy the three statutory requirements for an enforceable security agreement. First, all 22 notices convey valuable collateral—the relevant sugar-beet entity's "unit retains from American Crystal Sugar Company." Second, Sczepanski had the authority to execute the notices on behalf of the sugar-beet entities through the "Loan and Guaranty Agreement[s]." Third, the notices contain the debtor's signature (Sczepanski on behalf of the relevant sugar-beet entity) and provide a description of the collateral. Additionally, the notices contain language that the "[relevant sugar beet entity] . . . has granted to [Choice Financial] . . . a security interest in [relevant sugar beet entity's] unit retains from American Crystal Sugar Company," and this unequivocally demonstrates the parties' intention to create a security interest.

GF Finance contends that the notices of security interest purporting to grant a security interest in favor of Choice Financial fail because the notices reference a "fictional" security agreement, which Choice Financial acknowledged does not exist. GF Finance also argues that the notices of security interest purporting to grant a security interest in favor of John Deere fail because the notices reference security agreements dated May 4, 2010, and November 1, 2015, that were executed without the consent of Sczepanski's sugar-beet entity partners. The Uniform Commercial Code applies to "a transaction, *regardless of its form*, that creates a security interest in personal property or fixtures by contract." Minn. Stat. § 336.9-109(a)(1) (2018) (emphasis added). And GF Finance fails to cite to any authority stating that if a notice of security interest references "fictional" or unauthorized

documents, it is rendered deficient. Despite the claimed errors in the Choice Financial and John Deere notices of security interests, the crucial statutory components that create a security agreement are present.

Viewing the record in the light most favorable to the district court's findings, we are not left with "the definite and firm conviction" that the district court erred in finding that Choice Financial and John Deere created valid security interests in the sugar-beet entities' unit retains through the security agreements, financing statements, and the notices of security interests.[4] *Vangsness*, 607 N.W.2d at 472.

III. The district court did not err in ordering the auction and distribution of the unit retains from Sczepanski's assignment for the benefit of his creditors.

GF Finance argues that, after the district court determined that the sugar-beet entities owned the disputed unit retains, it erred in authorizing the auction of all of the unit retains in Sczepanski's assignment because the sale implicated unit retains that Sczepanski no longer owned. We disagree.

In its April 9, 2018 order, the district court determined that the broad language of the assignment transferred Sczepanski's financial interests in the sugar-beet entities to Ahlgren. As previously stated, Sczepanski had the authority to assign as long as he did not harm the financial interests of the entities. We conclude that the district court did not

[4] The district court also found that the notices of security interest doubled as joint-check agreements. Relying on caselaw from the United States Bankruptcy Court for the District of Hawaii, it determined that the joint-check agreements qualify as security agreements. We do not reach this issue.

clearly err in authorizing the auction and distribution of proceeds of the disputed unit retains.

Affirmed.